

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

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DATE: June 25, 2004

TO : Victoria E. Aguayo, Regional Director  
Region 21

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Addus Health Care  
Case 21-CA-36170  
and  
United Domestic Workers of America  
(Addus Health Care)  
Case 21-CB-13582

This case was submitted for advice on whether the parties violated Sections 8(a)(1), (2) and (3), and 8(b)(1)(A) and (2) of the Act by maintaining a provision in their collective bargaining agreement requiring Employer deductions from employees for the Union's political action fund without providing for employee authorization, even though the fees were not deducted during the 10(b) period; and whether the Union's failure to provide any Beck<sup>1</sup> notice also violated the Act.

We conclude that the Union violated Section 8(b)(1)(A) by failing to provide employees with any Beck notice. If the Region confirms that the Union also failed to notify employees of their General Motors<sup>2</sup> rights, then the Union violated Section 8(b)(1)(A) in that respect, as well. If the Region also confirms that the dues check-off authorizations signed by employees, if such exist, do not specifically authorize Employer deductions for the Union's political action fund, then the maintenance of a contractual provision authorizing those deductions also violates Section 8(b)(1)(A), as well as Section 8(a)(1).

### FACTS

The Employer provides domestic home care services to the elderly and disabled in and around Riverside County, California. The Union represents a unit of the Employer's home care workers. In September 2001, the parties executed a collective-bargaining agreement effective from August 2001 through June 30, 2002. It has been extended three

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<sup>1</sup> Communications workers v. Beck, 487 U.S. 735 (1988).

<sup>2</sup> NLRB v. General Motors, 373 U.S. 734 (1963).

times and is currently set to expire on June 30, 2005. Article 7 of the Agreement is entitled Union Security. Section 1 of Article 7 contains a standard union security clause. Section 3 is a dues check-off clause, providing that the Employer will deduct from each employee's pay all authorized fees, dues, and assessments as required by the Union, upon voluntary authorization executed by each employee directing the Employer to make such deductions. Section 4 provides that the Employer agrees to deduct from each employee's pay the amount specified for Civic Action dues.

The Civic Action dues represent employee payments into the Union's Civic Action Fund, a political action fund supporting local and statewide campaigns, candidates, and political issues of importance to the Union. The Civic Action dues are referenced in more detail in Article 26 of the agreement entitled "Holidays." Article 26 provides for seven named paid holidays, one paid personal day, plus a second personal day (the "ninth holiday") which is dedicated to the Union's Civic Action Fund (CAF). Article 26 specifies that the proceeds, that is, employee pay, from the second personal holiday have been designated for the CAF, and shall be forwarded by the Employer directly to the Union.

The Charging Party is a Union member and bargaining unit employee who objects to having the proceeds of her ninth holiday paid by the Employer to the CAF. The Charging Party asserts that neither she nor any other bargaining unit employee ever authorized the Employer to withhold and contribute the pay for their ninth holiday to the CAF. The Employer confirms that it never received any individual authorizations from unit employees permitting the deduction and remittance to the Union of money for their ninth holiday.

The Employer has not made any CAF deductions during the Section 10(b) period. The Employer first deducted money for the CAF in 2001 and paid it to the Union, but the Union returned the funds to the employees after they protested. The Union took the funds again in 2002 and did not return it to the employees. The Union has not taken any money for the CAF in 2003 or 2004, and the Employer asserts that the Union directed it not to make any further CAF deductions until further notice.

The Union has never provided any Beck notice to the unit employees. It also appears that the Union never provided employees with notice of their rights under General Motors.

**ACTION**

The Region should issue complaint, absent settlement, alleging that the Union's failure to provide employees with Beck notice violated Section 8(b)(1)(A). [FOIA Exemptions 2 and 5

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**1. The failure to give Beck and General Motors notice⁴**

When or before a union seeks to collect dues and fees under a union security clause, the union must inform employees of their General Motors right to be or remain nonmembers⁵ and that

nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.⁶

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³ We agree with the Region that the clause does not violate Section 8(a)(2) because no unlawful assistance to the Union has occurred within the 10(b) period. As to the 8(a)(3) and 8(b)(2) allegations, it is unnecessary to decide those in light of our conclusion that the clause violates Section 8(a)(1) and 8(b)(1)(A). Therefore, the Region should dismiss those allegations of the charge, absent withdrawal

⁴ It does not appear that the Region considered or investigated the question of whether employees were given notice of their rights under General Motors. We assume that none was given.

⁵ 373 U.S. at 740.

⁶ California Saw & Knife Works, 320 NLRB 224, 233 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998).

By failing to provide notice of both sets of rights, a union violates Section 8(b)(1)(A) of the Act.<sup>7</sup>

Applying these principles, we conclude that the Union violated Section 8(b)(1)(A) by failing to provide unit employees with notice of their rights under Beck and General Motors. [FOIA Exemptions 2 and 5

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## **2. The maintenance of Article 26**

Section 302(c)(4) of the Act prohibits an employer from deducting money from an employee and remitting it to a union without express employee authorization. The unauthorized deduction of union fees by an employer and payment to a union violates Sections 8(a)(1), (2) and (3) and 8(b)(1)(A) and (2).<sup>8</sup>

Under these principles, it would be unlawful for either the Employer or the Union to comply with Section 26 of their collective-bargaining agreement because it requires the Employer to deduct the pay employees would otherwise receive for their ninth holiday and remit it to the Union's Civic Action Fund without employee authorization. Article 26 itself, which embodies the parties' agreement about the ninth holiday, contains no requirement that employees first authorize the deduction. We note that Section 3 of the "Union Security" article of the contract specifies that the Employer will make any deductions for fees, dues, and assessments "upon voluntary authorization executed by each employee." However, we further note that Section 3 is followed by Section 4, in which the Employer agrees to deduct from each employee's pay the amount specified for the Civic Action dues. The fact that the parties added a separate provision for Civic Action dues (Section 4) apart from the section requiring employee authorization for deductions (Section 3) suggests that the parties do not intend or require the employee authorization provisions to apply to the Civic Action Fund. In addition, the fact that the Employer deducted the

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<sup>7</sup> Teamsters Local 75 (Schreiber Foods), 329 NLRB 28, 29 (1999), citing California Saw.

<sup>8</sup> Welsbach Electric Corp., 236 NLRB 503, 515 (1978).

employees' ninth holiday pay and remitted it to the Union in 2001 and 2002 without first receiving employee authorization demonstrates the parties' view that such authorizations were not required under the contract.

Since it would be unlawful for the parties to comply with Article 26 of their agreement, we conclude that the maintenance of Article 26, requiring Employer deductions for the Union without employee authorization, violates Sections 8(a)(1) and 8(b)(1)(A).<sup>9</sup>

B.J.K.

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<sup>9</sup> See, e.g. Flying Dutchman Park, Inc., 329 NLRB 414, 415-416 (1999) (maintenance of unlawful union security clause violates Sections 8(a)(1) and 8(b)(1)(A); employees reasonably could interpret the clause as a restraint on their Section 7 right to choose or refrain from union membership or support).

Our conclusion assumes that the Region's examination of dues check-off authorizations, should they exist, confirms that they do not contain a specific authorization for deduction of payments for CAF. [FOIA Exemptions 2 and 5 .]